IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1216 of 2000
With
First Appeals No. 1218 of 2000, 2303 of 2001, 2305, 2310, 2315, 2316, 2326, 2327, 2345, 2409, 2424, 2893, 3162, 4090, 4094, 4095, 4265, 4466, 4468, 4485, 4486, 4488, 4492, 4493, 4496, 4497, 4498, 4499, 4501, 4502, 4503, 4709, 4730, 5202, 5203, 5204, 5205, 5206, 5207, 5208, 5209, 5210, 5211, 2306, 2321, 2347, 2410, 2411, 3165, 3954, 4091, 4092, 4093, 4260, 4264, 4269, 4273, 4459, 4460 and 4990 of 2001 and 4678 and 4729 of 2001.

WITH

CIVIL APPLICATIONS No. 5180 of 2000, 5182 of 2000, 5522 of 2001, 5524, 5532, 5537, 5543, 5556, 5557, 5584 of 2001, 6194 of 2000, 5676 of 2001, 7002, 7568, 10011, 10035, 10036, 10891, 10916, 10964, 10966, 10967, 10968, 10970, 10971, 10972, 10973, 10975, 10977, 10978, 10979, 11539, 11618, 12923, 12924, 12925, 12926, 12927, 12928, 12929, 12930, 12931, 12932, 11413, 5551, and 5586 of 2001, 6189 of 2000, 6188, 6191 of 2000, 9756 of 2001, 6190 of 2000, 6192, 6193 of 2000, 10422 of 2001, 10844 of 2001, 10845 and 12570 of 2001. [Total: 59].
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For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question : NO

of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNCIPAL CORPORATION

Versus

ALPAH METAL & Others.

Appearance:

1. First Appeal No. 1216 of 2000

MR MG NAGARKAR for Petitioner.

RULE SERVED for Respondent No. 1

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT

and

MR.JUSTICE K.A.PUJ

Date of decision: 08/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The Ahmedabad Municipal Corporation, the appellant before us in this group of 65 First Appeals, has challenged the orders passed by the Small Causes Court, Ahmedabad, by invoking the provisions contained in Section 411 of the Bombay Provincial Municipal Corporation Act, 1949, (hereinafter referred to as "the Act"). The orders, under challenge, are passed by the Small Causes Court, Ahmedabad in the Municipal Valuation Appeals filed before the said Court, under Section 406 of the Act, challenging the valuation made by the Tax Assessors or the Assessing Officers of the Ahmedabad Municipal Corporation, in respect of different properties situate within the precincts of the Ahmedabad Municipal Corporation. Since the valuation made by the Tax Assessors or the Assessing Officers was disturbed or modified by the Small Causes Court, Ahmedabad, the Ahmedabad Municipal Corporation has taken this issue before this Court in the abovereferred First Appeals. Since common issues are involved in all these First Appeals, they are being disposed of by this common Judgment.

2. All these matters were earlier fixed before the Division Bench of this Court, wherein one of us, (Mr.

J.N. Bhatt, Actg. C.J.), was a party sitting with Mr. Y.B. Bhatt, J. However, because of the retirement of Mr. Y.B. Bhatt, J., the matters could not be finally decided and hence the matters are again placed before us. At the time of hearing of these matters, our attention is drawn to the decision of this Court in the group of First Appeals No. 260, 337, 1428 of 1982 and other hundreds of such Appeals decided on 31-3-2003, wherein one of us, [Mr. J.N. Bhatt, Actg. C.J.], was a party and we found that the issues involved, in the present group of First Appeals, are almost identical or similar with the issues involved in the earlier group of First Appeals decided by this Court on 31st March 2003. We, therefore, proceed to deal with this group of First Appeals in the light of facts recorded, statutory provisions discussed, relevant law on the subject applied and ultimate conclusion reached by the earlier Bench of this Court.

3. The grievance raised by the Ahmedabad Municipal Corporation, the appellant before us, in this group of Appeals, is more or less the same which was raised by the same appellant in earlier group of Appeals. This Court has observed in the earlier group of appeals that the Small Causes Court has not followed the procedure as envisaged in the Act and the taxation rules as contained in Chapter VIII of the Act and also the Code of Civil Procedure as well as the Evidence Act and has based its orders and judgments solely on the basis of the documents which have been produced by the respondents purported to be indicative of the value of the property and has determined the Annual Letting Value of the same on the strength of the said documents. While strengthening its grievance, the appellant has contended that the documents produced before the Small Causes Court for the first time were never produced before the Tax Assessors or Assessing Officers at the time when the respondents were given the opportunity of hearing for determining the value of the property and the authors of such documents were never examined by the Court. The grievance was further ventilated in this wise that Small Causes Court has committed grave error by taking on record and exhibiting such documents without following proper procedure laid down in the Act as well as in the Rules. Neither the source of this document was indicated nor the method of valuation was suggested in the said document. It was also one of the grounds for the grievance raised in the appeals that the formula prescribed under the provisions of the Act and the Rules for determining Annual Letting Value was totally ignored by the Court by substituting its own assessment without there being any cogent evidence with regard to the cost of construction, the

cost of land, the locality in which the premises in question are situated, the use to which the property in question is put, the age of the property, the quality of construction etc. The appellant has strongly contended in all these appeals that the assessments so substituted by the Small Causes Court were solely based on the Valuer's Report, Agreements to Sell, unauthenticated Sale Deeds or Certificates or Notes etc., and the Gross Rateable Value (GRV) of the property fixed by the Small Causes Court on different percentage ranging from 7% to 10%. It was also contended that the law laid down by this Court as well as by the Hon'ble Supreme Court was not correctly appreciated and applied by the Small Causes Court while fixing of the GRV of the different properties in question.

4. So far as the respondents are concerned, their main arguments before the Court are that the Small Causes Court has not committed any error while determining the valuation of the properties, the procedure laid down either under the Act or under the Rules has been correctly applied. It was further submitted that the assessment framed by the Tax Assessors or the Assessing Officers of the Ahmedabad Municipal Corporation are absolutely unjust, improper, unlawful, based on their whims and caprice and ignoring the statutory rules and provisions and also contrary to the law laid down by this Court as well as by the Apex Court. It was also strongly contended by the respondents that the Tax Assessors or the Assessing Officers of the Appellant Corporation have evolved their own omnibus formula taking its sweep, properties liable to be taxed and thereby it has arrived at the GRV which is very much on higher side resulting into undue financial burden on the owners/occupants thereof. It was also contended that no proper or adequate opportunities were given to the respondents and the documents produced before them were never taken into consideration.

5. After having taken into consideration the arguments advanced by both the parties and after having perused the authorities cited before the Court and after having discussed the relevant provisions of the Act as well as the Rules in great length, the earlier Division Bench has formulated certain points and evolved certain guiding principles for the purpose of determination of the valuation of the properties in respect of which the appeals were filed before the Court. They are enumerated in Para 11 of the Judgment, which are as under :

(a) Location of premises with respect to floor and its position on the floor specially road view, sea view, park view, etc.

(b) The type of construction, finishings and amenities.

(c) The extent of area.

(d) Planning of premises and extent of accommodation.

(e) Age of the building and extent of repairs necessary.

(f) The cost of land and building.

(g) The carpet area.

(h) The locality in which the premises or the building is situated.

(i) The access to transport facility.

(j) Quality of construction.

(k) The estimated life of the building, etc.

The Court has further observed in Para 12 of the Judgment that the Annual Letting Value of the premises in question has to be on the basis (A) in case the standard rent is fixed under Section 11 of the Bombay Rent Act, the standard rent and (B) in case the building is let but the standard rent is not fixed and the contractual rent is there, the contractual rent i.e. the rent actually received by the landlord and (C) where the premises are self-occupied for the residential purpose by the owner himself, the Municipal Authority will have to form its own assessment with regard to rent that may be received by the landlord from the hypothetical tenant, keeping in view the measure of standard rent that can be fixed for such property having reference to relevant Rent Control enactment and (D) while deciding the rent from the hypothetical tenant under clause (c) the factors mentioned above for determining the standard rent have to be kept in view. The GRV has to be based on the data of such rent.

6. With regard to the required procedure that is to be followed in the litigation concerning determination of the ratable value of imposition of tax of the properties

in question, this Court has discussed in great length in Para 13 of the Judgment, various aspects emerging from the said issue and has come to the conclusion in Para 17 of the Judgment that whatever evidence the owner or occupier desires to lead and whatever material he desires to produce, he should produce it when the matter is pending before the Municipal Authority in the proceedings under the Act and the Taxation Rules for determining the ratable value. When that stage has gone, he is precluded from doing it, subject to provisions relating to additional evidence as contained in the Act and Appeal Rules. The assessee cannot have his own choice in this and himself decide the stage at which such material should be produced. The Court has observed that in large number of cases this was not done and the respondents were permitted to produce the material at the stage of appeal under Section 406 of the Act without following the due procedure by the assessors as well as by the Court. The Court has, therefore, taken the view that the Small Causes Court has based its judgment on strength of documents which had not been produced at the time when the matter was under consideration of the Municipal Authority but they were just submitted to the Court at the time of hearing and the Court had placed reliance on it without insisting upon its proper production and without verifying their authenticity. The Court has, therefore, found the grievance raised by the appellant as fully justified. The Court has, therefore, thought it fit to send back all the Appeals to the Small Causes Court for reconsideration in the light of the observations made by the Court in the said judgment.

7. With regard to percentage formula applied by the Small Causes Court, this Court has observed that if the Court had applied its mind to the various aspects discussed in Para 18 of its judgment, it could have realised that considering variety of reasons, the criteria of 7% cannot be applied uniformly irrespective of the facts of the case. The Court has further observed that it is quite possible that considering the present economic condition and recession in real estate market, the rate of interest by way of yield on the property may be lesser than 7% and may go to 6% or even 5%. Even on this count also, the Court has thought it fit to remand the matter for reconsideration in light of the several aspects discussed in the judgment.

8. We have heard the learned advocates appearing for the respective parties and we have also considered the submissions. We have gone through the judgment delivered by this Court on 31st March 2003 in the group of First

Appeals, and we find ourselves in agreement with the view taken by the earlier Division Bench. The discussion of facts, applicability of statutory provisions and rules, discussion regarding law laid down by this Court as well as by the Apex Court and the ultimate conclusion drawn by the Court in the aforesaid Judgment, squarely cover the field of the present group of Appeals and, hence, we do not think it proper and expedient to dwell upon ourselves to discuss it once again in such a great length. However, before parting with this Judgment, we take note of the submission made by Mr. Nishith P. Thakkar, the learned advocate appearing for the respondents in some of these Appeals. He relied on the Judgment delivered by another Division Bench of this Court, consisting of Mr. B.C. Patel and Mr. Sharad D. Dave, JJ., in the case of Ahmedabad Municipal Corporation Vs.Vireshchand Chandrakant Desai - AIR 2002 Gujarat 379, wherein the Court has discussed about the bounden duty of the Taxing Authority, the importance of the order passed by the Taxing Authorities in respect of the same assessee for earlier years, the mode of giving intimation regarding hearing and recording of reasons by the Valuation Officers while arriving at the particular conclusion and the Assessing Officers and the Court below are supposed to keep these aspects in mind while arriving at a particular conclusion.

9. In view of the aforesaid discussion and in view of the ratio laid down by this Court in the earlier group of Appeals decided on 31st March 2003 as well as the decision of this Court in the case of Ahmedabad Municipal Corporation vs. Vireshchand Chandrakant Desai (Supra), we hereby quash and set aside all these orders, which are under challenge in the present group of Appeals, and remand the matter to the file of the Small Causes Court to decide the whole issue afresh in the light of the observations and discussion made in this judgment as well as in the judgment given by this Court in the earlier group of Appeals decided on 31st March 2003. All these Appeals are, therefore, allowed for statistical purposes with no order as to costs.

10. Since the main Appeals are decided, the Civil Applications, 59 in number, shall also stand disposed of accordingly.

[J.N. Bhatt, Actg. C.J.]

rmr. [K.A. Puj, J.]